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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)

ASSOCIATION FOR LOCAL)
TELECOMMUNICATION SERVICES)

CCB/CPD 97-30

Request for Clarification of the Commission's Rules)
Regarding Reciprocal Compensation for)
Information Service Provider Traffic)

COMMENTS OF WORLDCOM, INC.

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SUMMARY

Pursuant to Section 251(b)(5) of the Communications Act of 1934, as amended (“the Act”), and Commission interpretation of the Act, incumbent local exchange carriers, competitive local exchange carriers, and state regulators have negotiated, arbitrated, reviewed and approved interconnection agreements with the clear understanding that the telecommunications services subject to reciprocal compensation includes all calls that originate and terminate within a local calling area. No exception for local traffic that is terminated with end users that provide customers with access to the Internet is in the Act, in the Commission’s rules, or in any state-approved interconnection agreement of WorldCom, Inc.

The ILECs’ position that traffic that is delivered to Internet service providers (“ISPs”) is not local traffic because it does not terminate with the ISP is unfounded. Because the ISP is an end user of telecommunications services purchased pursuant to a carrier’s local exchange service tariff, whatever the ISP may do to provide its information services to its customers is irrelevant to the inquiry whether a call terminates with the ISP when the ISP answers it. This Commission has explicitly stated that the local call connecting a subscriber to an ISP is separate and distinguishable from the ISP’s service offering. ILECs themselves treat calls to the ISPs that they serve as local calls for billing and interstate separations purposes.

Moreover, six state regulatory agencies have found no basis for the novel position asserted by the ILECs. Finally, if it were to prevail, the position of the ILECs would have severe anticompetitive implications in that CLECs would incur uncompensated transport and termination costs, driving them away from offering or providing service to ISPs.

As the end user of local exchange service, any calls received by the ISP from another end user within the same local calling area must be considered local traffic subject to reciprocal compensation arrangements. This Commission should clarify that nothing in its rules provides for an exception from reciprocal compensation for local traffic that is terminated to ISPs.

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COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), by its undersigned counsel and pursuant to Public Notice¹, hereby submits these comments in support of the request by the Association for Local Telecommunication Services ("ALTS") for clarification of the Commission's rules regarding reciprocal compensation for information service provider traffic, and respectfully states as follows:

I. INTRODUCTION

Section 251(b)(5) of the Communications Act of 1934, as amended (the "Act"), imposes on each local telecommunications carrier "the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."² The Commission has subsequently interpreted this statutory provision to mean that reciprocal compensation shall apply to "local

¹ *Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, DA 97-1399, CCB/CPD 97-30 (rel. July 2, 1997).

² 47 U.S.C. § 251(b)(5).

telecommunications traffic,”³ which it defined as traffic that “originates and terminates within a local service area established by the state commission.”⁴ The incumbent local exchange carriers (“ILECs”), competitive local exchange carriers (“CLECs”), and the states, pursuant to their authority under Section 252 of the Act to arbitrate, review, and approve interconnection agreements for the provision of local exchange service, have considered this interpretation in negotiating, arbitrating, and approving numerous interconnection agreements.⁵

WorldCom, through its MFS operating subsidiaries, provides local exchange service in over 20 states pursuant to such interconnection agreements with the respective ILECs in those states. Each of the interconnection agreements which enable WorldCom to provide local exchange service addresses the exchange of traffic between WorldCom’s MFS operating subsidiary and the ILEC. Pursuant to these agreements, MFS/WorldCom and the ILEC exchange traffic between their respective networks, so that a customer subscribing to MFS/WorldCom’s local exchange service can place calls to customers subscribing to the ILEC’s local exchange service, and *vice versa*. The reciprocal compensation arrangements for terminating each other’s local exchange traffic are specifically stated in every interconnection agreement.⁶ Each of these agreements has defined local

³ 47 C.F.R. § 51.701(a).

⁴ 47 C.F.R. § 51.701(b)(1).

⁵ Because the states review and approve interconnection agreements, they necessarily have jurisdiction over disputes concerning interpretation and performance of these agreements. Consideration of issues related to reciprocal compensation is within the jurisdiction of both the states and the Commission.

⁶ For example, in New York, Sections 1.51 and 1.67 of the interconnection agreement between MFS Intelnet of New York, Inc. and New York Telephone unambiguously establish the parameters for reciprocal compensation:

calls as calls originating and terminating in the same local calling area. No agreement has made any exception for local calls to an Internet service provider ("ISP").⁷

MFS subsidiaries operating in states served by NYNEX, Bell Atlantic, Southwestern Bell, Pacific Bell, and Ameritech have received letters or were advised by those ILECs that the ILEC would no longer pay reciprocal compensation for local traffic originated by one of the ILEC's customers and delivered by that ILEC to the MFS network for MFS to terminate at an MFS local exchange customer who provides access to the Internet.⁸ In response to these unilateral efforts to

1.51 "Reciprocal Compensation" is As Described in the Act, and refers to the payment arrangements that recover costs incurred for the transport and termination of Telephone Exchange Service Traffic.

1.67 "Telephone Exchange Service Call" or "Telephone Exchange Service Traffic" means a call completed between two Telephone Exchange Service Customers of the Parties located in the same LATA, originated on one Party's network and terminated on the other Party's network, where such call was not carried by a third party as either a presubscribed call (1+) or a casual dialed (10XXX or 101XXXX) call. Telephone Exchange Service Traffic is transported over Traffic Exchange Trunks.

This language is duplicated, with slight variations, in each of WorldCom's interconnection agreements.

⁷ WorldCom recognizes that the term "ISP" sometimes may also be used for "information service providers." Enhanced service providers are a subcategory of information service providers, and Internet service providers are a subcategory of enhanced service providers.

⁸ Letter dated April 16, 1997 from Patrick A. Garzillo, NYNEX, to Alex J. Harris, MFS Intelenet of New York, Inc.; Letter dated April 28, 1997 from Patrick A. Hanley, Bell Atlantic, to Gary Ball, MFS Intelenet of Maryland, Inc.; Letter dated June 9, 1997 from Larry B. Cooper, Southwestern Bell Telephone, to Bill Mullen, MFS WorldCom; Letter dated July 3, 1997 from Thomas J. Lamb, Ameritech, to Jerry Zimmerman, MFS Intelenet, Inc. Copies of these letters are attached. No explanation is given as to why the ILECs have charged MFS reciprocal compensation for the same type of traffic that is originated by an MFS customer and terminated to an ILEC ISP customer. In Connecticut, Southern New England Telephone ("SNET") filed a

revise the various state-approved interconnection agreements, MFS subsidiaries have filed complaints with the state utility commissions of New York, Maryland, Connecticut, and Massachusetts seeking relief from the unlawful conduct of the ILECs.⁹ Of the four pending complaint proceedings, only the staff of the New York Public Service Commission ("NYPSC") has taken action at the time of this filing. The response of the staff of the NYPSC, instructing New York Telephone Company to continue to pay reciprocal compensation for local traffic delivered by MFS to ISPs, was attached to the ALTS Letter that began this proceeding.¹⁰

The ALTS Letter requests clarification that nothing in the Commission's *Local Competition Order*¹¹ altered the Commission's rule that calls to an ISP made from within a local calling area are local calls. In this respect, this inquiry has nothing to do with the operations of the end-user ISP (as an enhanced service provider). Rather, it has to do with interpretation of a general interconnection

petition for a declaratory ruling that traffic delivered to Internet service providers ("ISPs") is ineligible for reciprocal compensation. *Petition of the Southern New England Telephone Company for a Declaratory Ruling Concerning Internet Services Provider Traffic*, Docket No. 97-05-22 (Conn. D.P.U.C.). MFS has filed comments in the Connecticut proceeding opposing SNET's petition.

⁹ *Complaint of MFS Intelenet of New York, Inc., against New York Telephone Company for Breach of Interconnection Terms, and Request for Immediate Relief*, Case No. 97-C-0895 (N.Y. P.S.C.); *Complaint of MFS Intelenet of Maryland, Inc., against Bell Atlantic-Maryland, Inc. for Breach of Interconnection Terms, and Request for Immediate Relief* (Md. P.S.C.); *Complaint of MFS Intelenet of Massachusetts, Inc., against New England Telephone and Telegraph Company for Breach of Interconnection Terms, and Request for Immediate Relief* (Mass. D.P.U.); *Complaint of MFS Intelenet of Connecticut, Inc., against The Southern New England Telephone and Telegraph Company for Breach of Interconnection Terms, and Request for Immediate Relief*, (Conn. D.P.U.C.).

¹⁰ Letter dated June 20, 1997 from Richard Metzger, ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, Federal Communications Commission ("ALTS Letter").

¹¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (rel. Aug. 8, 1996).

principle, namely that local calls to ISPs shall be treated as local traffic subject to reciprocal compensation. Given that the ILECs appear to base their claims to exclude this traffic on a distorted misinterpretation of well established Commission policy, Commission clarification that its position remains unchanged should assist the state commissions in enforcing the terms of the various interconnection agreements.¹²

II. THE LOCAL CALL PLACED TO THE ISP TERMINATES WHEN IT IS ANSWERED BY THE ISP BECAUSE THE ISP IS AN END USER

Both the ILEC's customers and MFS/WorldCom's customers have purchased local exchange service from their chosen local exchange provider pursuant to the provider's local exchange tariff. Both MFS/WorldCom and the ILECs provide over their respective networks local exchange services to end user customers, including some business customers operating as ISPs. Typically, customers make a local phone call to reach their ISP. That local call is treated as a completed call when the ISP answers the call. This call remains "up" or connected for the duration of that specific session between the ISP and its customer. During the session, the ISP's customers may ask the ISP to locate and retrieve information from a wide variety of sources -- data that may be resident in the ISP's local databases, or in nearby or distant databases that are accessible to the ISP by using one or more communications links to reach them. But control over the initial call never leaves the original ISP location. The call is not forwarded or transferred to

¹² Any regulatory regime related to the Internet must adhere to the pronouncement of Congress that it is "the public policy of the United States. . .to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. §230(b)(2). This instruction may be interpreted to require any Federal supervision of Internet markets to be narrowly tailored so as not to interfere with the present market structure, including existing arrangements between the ISP and its local exchange service provider.

another location. Rather, information is retrieved by the ISP and delivered to its customer in the format and at the time selected by the customer. Even the types of call are different. The local call is usually an analog, circuit-switched call while the ISP usually uses digital packet-switched technologies. Therefore, in addition to providing content, the ISP is performing code and protocol conversion. All three are non-common carrier activities. As a result, the ISP is not a common carrier subject to Title II regulation,¹³ but an end user of local exchange service. The Commission has repeatedly affirmed the rights of ISPs as end users to employ local exchange services, under *intrastate* tariffs, to connect to the public switched telecommunications network.¹⁴

It is undisputed that the calls at issue here are calls between an ILEC customer and an MFS/WorldCom customer within the same state defined local calling area. However, contrary to the plain language of the interconnection agreements, the ILECs contend that calls to ISPs do not "terminate" when answered by the ISP's equipment, but rather terminate at some amorphous location on the Internet, a world-wide network of interconnected computers. As the term is commonly employed in the telecommunications industry, however, both colloquially and authoritatively, a call placed over the public switched telecommunications network is considered

¹³ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Final Decision, Docket No. 20828 (rel'd May 2, 1980), at para. 119; 47 C.F.R. §64.702(a) ("Enhanced services are not regulated under Title II of Act.") Internet access is an enhanced service. *Access Charge Reform Price Cap Performance Review for Local Exchange Carriers*, Notice of Proposed Rulemaking, CC Docket No. 96-262 (rel. Dec. 24, 1996) at para. 284.

¹⁴ *Amendments to Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, para. 2 n.8 (1988). In its First Report and Order regarding Access Charge Reform, the Commission reaffirmed this position explicitly and declined to impose access charges on ISPs. *In the Matter of Access Charge Reform*, First Report and Order, CC Docket No. 96-262 (rel. May 17, 1997), paras. 344-348 ("*Access Charge Reform Order*").

to be "terminated" when it is delivered to the local exchange end user bearing the called telephone number.¹⁵ The local call is completed at that point, regardless of the identity or status of the called party. Nothing in the interconnection agreements or applicable law or regulations creates a distinction pertaining to calls placed to local exchange service customers simply because they are ISPs.

In the face of this common understanding, the ILECs argue that the nature of this call is somehow transformed as a result of the way in which the ISP provides its service to the caller. However, to the contrary, the ISP is simply a communications-intensive business end user selling a product to other consumer and business end-users, not unlike pizza delivery firms, travel reservation agencies, credit card verification firms, or taxicab companies. The ISP, like a travel agent, may use any variety of communication services from any number of carriers to produce and provide its product to its customers. For purposes of determining the appropriate compensation for terminating a call under interconnection agreements entered into pursuant to the 1996 Act, how this end user, any more than any other communications intensive end user, provides its product to its customers is simply not relevant to the issue of the nature of the call placed by the ISP's customer to the ISP. Pursuant to MFS/WorldCom's interconnection agreements with the ILECs, to the extent an ISP purchases local exchange service from MFS/WorldCom and receives calls which originate from users of ILEC-provided local exchange

¹⁵ Feature Group A service is not an exception to this rule because Feature Group A is an access service rather than a local exchange service. Section 69.5(b) of the Commission's rules requires that interexchange carriers use access services, rather than local exchange services, to originate and terminate interstate telecommunications. However, as noted above, the Commission has expressly authorized the use of *local exchange* services by ISPs.

service, where both users are within the same local calling area, the ILEC is obligated to pay reciprocal compensation to MFS/WorldCom for termination of such calls. The mere fact that an ISP's customer may direct the ISP to locate and retrieve information by querying the Internet does not alter the legal status of the connection between the customer and the ISP as being a local call. The local call that is delivered to the ISP and any subsequent transmission that is launched by the ISP are separate and distinguishable transactions.

Clearly, the fact that the ISP is not a common carrier but an end user that receives local calls from end user customers, accepts requests for information from the end user, obtains that information over a wholly separate packet-switched data network, and then delivers that information to the end user, is conclusive evidence of the severability of the elements that the ILECs argue should be treated as an indivisible communication.

III. THE COMMISSION HAS ALREADY DETERMINED THAT THE TRANSMISSIONS ARE SEPARATE AND DISTINGUISHABLE

The Commission's recent *Universal Service Order*¹⁶ and *Access Charge Reform Order* affirm the fact that the local call to the ISP and the subsequent Internet transmissions are separate and distinguishable. In the *Universal Service Order*, the Commission determined that Internet access consists of severable components: the connection to the Internet service provider via voice grade access to the public switched network, and the information service subsequently provided by the ISP.¹⁷ In other words, the first component is a simple local exchange telephone call.

¹⁶ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 (rel. May 8, 1997) ("*Universal Service Order*").

¹⁷ *Id.*, paras. 83, 788-789 ("When a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, the connection is a

Reciprocal compensation must be paid for such calls under the interconnection agreements. In the *Access Charge Reform Order*, the Commission declined to allow LECs to assess interstate access charges on ISPs.¹⁸ Indeed, the Commission unambiguously characterized the connection from the end user to the ISP as local traffic: "To maximize the number of subscribers that can reach them *through a local call*, most ISPs have deployed points of presence."¹⁹

In addition, in the *Non-Accounting Safeguards Order*, the Commission determined that the local call placed to an Information Service Provider was separate from the subsequent information service provided.²⁰ The severability of these components was key to the Commission's conclusion that if each was provided, purchased, or priced separately, the combined transmissions did not constitute a single interLATA transmission.²¹ Consistent with established policy, the Commission should declare that calls originated and delivered within the same local service area to the local exchange service number of ISPs are local traffic that is eligible for local reciprocal compensation under interconnection agreements.

telecommunications service and is distinguishable from the Internet service provider's service offering.")

¹⁸ *Access Charge Reform Order*, paras. 344-348.

¹⁹ *Id.*, n.502 (emphasis added).

²⁰ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149 (rel. Dec. 24, 1996), para. 120.

²¹ *Id.*

IV. THE ILECS' OWN CONDUCT IS CONCLUSIVE EVIDENCE THAT TRAFFIC TO ISPS IS LOCAL

At the heart of the ALTS petition is the compelling argument that the ILECs' own conduct in treating traffic to ISPs from an end user in the same local calling area as local traffic provides additional support for the conclusion that such traffic should be treated as local for the purposes of reciprocal compensation. As further evidence in support of this argument, the Commission should consider that Bell Atlantic has proposed employing local exchange service in its provision of Internet access services. Although ALTS refers to Bell Atlantic's proposed amendment to its Comparably Efficient Interconnection ("CEI") plan filed with the FCC regarding its own proposed Internet access service in NYNEX territories, one additional statement by Bell Atlantic should be considered here. Bell Atlantic states that "For dial-up access, the end user will place *a local call to the Bell Atlantic Internet hub site* from either a local residence or business line. . . . Bell Atlantic's [ISP] vendor will subscribe to *local telephone services* -- either standard business lines or ISDN -- to receive the call."²²

This practice by the ILECs is confirmed in MFS' recent complaints against the ILECs' efforts to unilaterally redefine the nature of interconnected ISP traffic. The MFS affiliates demonstrate in their complaints in Maryland and Massachusetts that Bell Atlantic and NYNEX, respectively, charge their own customers local rates for traffic to ISPs, and classify such traffic as local for purposes of interstate separations. Neither Bell Atlantic nor NYNEX denied the

²² *Offer of Comparably Efficient Interconnection to Providers of Enhanced Internet Access Services*, Amendment to Bell Atlantic Plan to Expand Service Following Merger with NYNEX, CCB Pol. 96-09 (rec'd May 5, 1997), at 3 (emphasis added).

allegations.²³ In New York, the Staff of the Department of Public Service responded to the CLECs' complaints before New York Telephone filed a response. In instructing New York Telephone to continue to pay reciprocal compensation to CLECs for traffic delivered to ISP customers, the NYPSC Staff said to New York Telephone, "Please be advised that the interpretation expressed in NYT's letters has not been approved by the Public Service Commission and is at odds with NYT's own treatment of this traffic as intrastate in its assessment of usage charges to other customers."²⁴

V. US WEST PREVIOUSLY PRESENTED, AND LOST, THE ARGUMENT ASSERTED BY THE ILECS THAT PROMPTED THIS PROCEEDING

The Commission should also know that the position asserted by the ILECs has been soundly rejected by at least five state regulatory agencies. When USWest asserted a similar argument that traffic originated by or terminated to enhanced service providers should be exempted from reciprocal compensation arrangements under Interconnection Agreements, the states of Arizona,²⁵ Colorado,²⁶

²³ *Complaint of MFS Intelenet of Maryland, Inc., against Bell Atlantic-Maryland, Inc. for Breach of Interconnection Terms, and Request for Immediate Relief*, Response of Bell-Atlantic, Maryland, Inc. (Md. P.S.C.); *Complaint of MFS Intelenet of Massachusetts, Inc., against New England Telephone and Telegraph Company for Breach of Interconnection Terms, and Request for Immediate Relief*, Answer of New England Telephone and Telegraph Company (Mass. D.P.U.).

²⁴ Letter dated May 29, 1997 from Allan Bausback, New York Public Service Commission, to William Allan, New York Telephone Company, attached as an exhibit to the ALTS Letter.

²⁵ *Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996*, Opinion and Order, Decision No. 59872, Docket No. U-2752-96-362 et al. (Arizona Corp. Comm. Oct. 29, 1996) at 7.

²⁶ *Petition of MFS Communications Company, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc.,*

Minnesota,²⁷ Oregon,²⁸ and Washington²⁹ all declined to treat traffic to enhanced service providers, including Internet service providers, any differently than other local traffic. These decisions, together with the recent NYPSC Staff decision, should be considered by the Commission as persuasive evidence that the ILECs' position has failed to find support in any jurisdiction that has considered the issue. This is not a surprising result given the inexplicably different and discriminatory treatment that the ILECs propose should be applied to their ISP customers as opposed to the ISP customers of CLECs.

VI. THE ILECS' POSITION HAS SEVERE ANTICOMPETITIVE IMPLICATIONS

The ILECs' position would also have severe anticompetitive implications. Any carrier terminating calls to an ISP incurs costs in terminating such calls (which are the same costs incurred in terminating calls to any other end user). Since the ILECs control most of the originating traffic within its territory, their newly announced position would force MFS/WorldCom and other new entrants to terminate these calls without compensation in direct violation of the Act. The inevitable

Decision Regarding Petition for Arbitration, Docket No. 96A-287T (Col. PUC Nov. 5, 1996) at 30.

²⁷*Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCI Metro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with US WEST Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Order Resolving Arbitration Issues, Docket Nos. P-442, 421/M-96-855, P-5321, 421/M-96-909, P-3167, 421/M-96-729 (Minn. PUC Dec. 2, 1996) at 75-76.

²⁸*Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996*, Commission Decision, Order No. 96-324 (Ore. PUC Dec. 9, 1996) at 13.

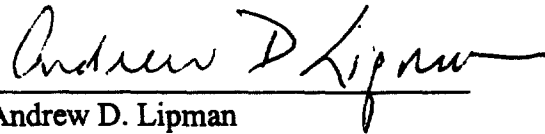
²⁹*Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and US WEST Communications, Inc., Pursuant to 47 USC § 252*, Arbitrator's Report and Decision, Docket No. UT-960323 (Wash. Utils. and Transp. Comm. Nov. 8, 1996) at 26.

result would be that no CLEC would be willing to furnish service to an ISP, since providing that service would result in immense, uncompensated termination costs. This would leave the ILECs with a *de facto* monopoly over ISP end users, a state of affairs that was clearly not intended by the 1996 Telecommunications Act.

VII. CONCLUSION

The Commission should grant the ruling requested by ALTS, and supported by WorldCom, that all local traffic, including traffic delivered by ILEC's for termination by CLECs to their customers who happen to be ISPs, is eligible for local reciprocal compensation.

Respectfully submitted,



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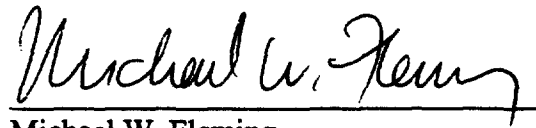
Dated: July 17, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July 1997, copies of **COMMENTS OF
WORLDCOM, INC.** were hand-delivered to the following:

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Patrick A. Gerardo
Managing Director, Local Carrier Markets

NYNEX

April 16, 1997

Alex J. Harris
Vice President - Regulatory Affairs
MFS Internet
33 Whitehall Street, 15th Fl
NY, NY 10004

Re: Reciprocal Compensation for Internet Traffic

Dear Alex:

NYNEX has been receiving bills seeking reciprocal compensation for traffic that is being delivered to Internet Service Providers ("ISPs"). It is our view that such traffic is interstate in nature and not eligible for reciprocal compensation under the terms of our Interconnection Agreement and the FCC's rules.

NYNEX is conducting a study to determine the number of minutes that were delivered to ISPs in February of this year. Once this study is completed, we will then ask that you issue us a credit for any reciprocal compensations bills that we have already paid. If our study shows that you delivered Internet traffic to us, we will issue an offsetting credit. In addition, we would like you to agree that neither of us will include Internet traffic in future bills for reciprocal compensation.

Please confirm your agreement by signing the enclosed copy of this letter. If we cannot reach an agreement, NYNEX will withhold payment of reciprocal compensation bills pending resolution of this issue. We hope that will not be necessary.

If you have any questions, I will be glad to discuss this matter further with you.

Very truly yours,

P. A. Gerardo

Agreed to:

Bell Atlantic Network Services, Inc. Patrick A. Hanley
Two Bell Atlantic Plaza President
1320 North Court House Road Carrier Services
Ninth Floor
Arlington, Virginia 22201
703 974-4800
FAX 703 974-6131

April 28, 1997

OVERNIGHT COURIER, RETURN RECEIPT REQUESTED

MFS Internet of Maryland, Inc.
33 Whitehall Street, 15th Floor
New York, New York 10004
Attn: Mr. Gary Bell, Director, Regulatory Affairs-Eastern Region

Dear Mr. Bell:

This letter addresses an issue that has arisen in the course of the implementation of interconnection agreements between Bell Atlantic-Maryland, Inc. ("BA") and CLBCs, including MFS Internet ("MFS"). BA has become aware that some CLBCs have included telephone calls handed off to Internet Service Providers (ISPs) for carriage over the Internet in the reciprocal local call compensation and associated interconnection charges that the CLBC bills to BA. BA may have also included some ISP traffic in the local call compensation that it bills to CLBCs.

It is inconsistent with the terms of the interconnection agreements to bill local call compensation for calls made through an ISP. The great majority of calls handed off to an ISP do not terminate at the ISP's local office. Rather, most calls to an ISP are placed for the purpose of using the ISP as a gateway to another telecommunications network, the Internet, which then carries the call to locations outside the local calling area -- often across the country or internationally. Telephone calls made to complete a connection over the Internet are not "Local Traffic" within the meaning of the BA/MFS Interconnection Agreement of July 16, 1996 (the "Agreement"). In particular, such traffic does not "terminate[]" to a Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ("EAS") area..." as provided by subsection 1.44 of the Agreement. Internet access traffic does not terminate either on a "Party's network" or "within a given local calling area."

Accordingly, BA hereby:

- (1) Requests that MFS provide, within 30 days of the date of this letter, a factually-supported estimate of the portion of the traffic that BA has sent to MFS that MFS has in turn delivered to an ISP (including any MFS affiliate that is an ISP). Please provide these estimates for each of the last two billing months and explain the methodology used by MFS to develop these estimates. BA will also provide an

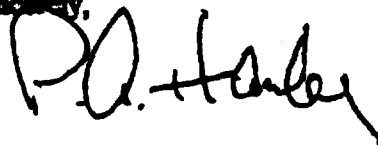
estimate of traffic that MFS has sent to BA that has been delivered by BA to any ISP, or would consider any estimates of such traffic that MFS can more readily provide.

- (2) Provides notice that it disputes MFS's charges for the ISP traffic pursuant to subsection 29.8 of the Agreement. Based on our records of traffic exchange with MFS, BA estimates that the volume of ISP traffic for which MFS has erroneously billed BA reciprocal compensation charges is approximately 35,382,601 minutes in January and 32,515,070 in February.
- (3) Provides notice that, pursuant to subsection 29.8.3 of the Agreement, BA will withhold payment of the disputed portion of MFS's bills for reciprocal compensation and associated charges for the erroneously billed ISP traffic based on the estimates in paragraph (2) above. BA may update or adjust this figure based on factually-supported estimates provided by MFS pursuant to paragraph (1) above. To the extent that BA has already compensated MFS for the disputed amounts, BA will deduct the relevant amounts from current interconnection charges due to MFS. Upon request of MFS, BA will place the unpaid (or deducted) disputed amounts into an interest-bearing escrow pursuant to subsection 29.8.3 of the Agreement.
- (4) Agrees to similar disputed amount procedures with respect to any ISP traffic delivered by MFS to BA, pursuant to the above paragraphs.

BA believes that an expeditious resolution of this issue is in the interests of both BA and MFS. BA looks forward to working with MFS to reach a swift and constructive resolution of this issue.

You may contact me on (703)974-4800 with any questions or to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "P. A. Hickey". The signature is written in a cursive, flowing style with a large initial "P" and a long horizontal stroke extending to the right.

Larry R. Cooper
General Manager
Competitive Provider
Account Team

Southwestern Bell Telephone
One Bell Plaza
Suite 6000
Dallas, Texas 75208
Phone 214 484-8145
Fax 214 484-1488



June 9, 1997

Mr. Bill Mullen
Local Service Development
MPS WorldCom
One Oakbrook Terrace
Oakbrook Terrace, IL 60181

RE: Local Terminating Compensation for Delivery of Internet Service Provider Traffic

Dear Mr. Mullen:

The purpose of this letter is to address local terminating compensation for the delivery of traffic destined for internet service providers (ISPs).

Originating access to an ISP is accomplished by the ISP's subscribers dialing a seven digit telephone number which local exchange carriers route through their switching networks to the ISP's premises. The ISP often uses special access circuits to transport this originating interexchange access traffic to a distant location.

The FCC has found, and the courts have agreed, that the jurisdiction of traffic is determined by the end-to-end nature of a call. In paragraph 28 of the FCC's *Order Designating Issues for Investigation* in CC Docket No. 88-180, released April 22, 1988, the FCC disagreed with an argument by Southwestern Bell that 800 credit card traffic terminated at the IXC's credit card switch for jurisdictional purposes. The FCC stated that the switching performed at a credit card switch was an intermediate step in a single end-to-end communication. It is the ultimate destination that must be used to jurisdictionalize a call. In the *NARUC v. FCC* decision issued October 26, 1984, (746 F.2d 1492), the court found that even the use of facilities that are wholly within an exchange may be jurisdictionally interstate as a result of the traffic that uses them.

The FCC provided ISPs, insofar as they are also enhanced service providers, with an access charge exemption that permits ISPs to use local exchange services in lieu of access services to receive originating interstate calls (and to terminate interstate calls to the extent this functionality is required). The use of local exchange services by an ISP does not change, in any way, the jurisdiction of the originating interstate traffic transported over these services to the ISP's premises. In other words, this originating interstate access traffic does not become "local traffic" simply because the FCC permits an ISP to use business local exchange service as its exchange access service.

Mr. Bill Mullen
June 9, 1997
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In paragraph 1034 of its *Local Competition Order* in CC Docket No. 96-98, released August 8, 1996, the FCC stated that the reciprocal compensation provisions of section 251(b)(5) would only apply to local traffic as defined by the state commission (paragraph 1035). Further, the FCC specifically ruled that reciprocal compensation did not apply to interstate or intrastate interchange traffic. As such, Southwestern Bell/Pacific Bell will not request, nor will it pay, local terminating compensation for interstate or intrastate interchange traffic. This includes calls passed to ISPs pursuant to local interconnection agreements since this traffic is jointly provided originating interchange access. This decision satisfies the spirit and intent of the Telecommunications Act of 1996 and is consistent with the provisions of local interconnection agreements.

If you would like to discuss this matter further, I can be reached on 214-464-8145 or you may call your account manager, Jeff Fields, on 214-464-5676.

Sincerely,



cc: Jeff Fields



July 3, 1997

Mr. Jerry Zimmerman
MFS Intelenet, Inc.
Senior Manager, Operations
800 S. Wells
Chicago, IL 60607

Dear Mr. Zimmerman:

It has come to our attention that MFS has been billing Ameritech for Reciprocal Compensation for non-Local Traffic in error. Although Ameritech is not yet able to identify the total amount of such non-Local Traffic, Ameritech believes that MFS has been terminating traffic destined for Internet Service Providers and has been incorrectly billing Ameritech Reciprocal Compensation for this traffic.

As such, we feel it important to remind you of the billing terms regarding Reciprocal Compensation as stated in the Interconnection Agreements between our respective companies. According to Section 5.8.1 of the Interconnection Agreements, Reciprocal Compensation *only applies* to Local Traffic terminated on the terminating party's network. In addition, Section 5.8.3 specifically provides that Reciprocal Compensation arrangements in the Interconnection Agreement[s] *do not apply* to Exchange Access Service. Traffic destined for Internet Service Providers is Exchange Access Traffic and therefore under our Interconnection Agreement, Reciprocal Compensation does not apply to this type of traffic. Instead, this traffic would be subject to the Meet-Point Billing Arrangements in Article VI of the Interconnection Agreements had the FCC not exempted such traffic from access charges.



In order to rectify any Reciprocal Compensation billing discrepancies, it is imperative that we immediately discuss a process for identifying all non-Local Traffic for which either company has incorrectly paid Reciprocal Compensation to the other company. Once the amount of incorrect payments is identified in accordance with our Interconnection Agreements (Section 27.5.1), Ameritech expects that each party will reimburse or credit the other party for any incorrectly paid Reciprocal Compensation.

Mr. Jerry Zimmerman
July 3, 1997
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Ameritech estimates that approximately 41.40% of MFS's Reciprocal Compensation for Michigan and 37.92% of MFS's Reciprocal Compensation for Illinois' billings incorrectly include traffic destined for Internet Service Providers. On a going-forward basis, Ameritech will not pay that percentage of MFS's bills for Reciprocal Compensation in each state, based on that state's percentage. Of course, this would be subject to further adjustments once Ameritech is able to determine the actual amounts that have been incorrectly billed. Similarly, Ameritech will show an interim credit of a determined percentage on Ameritech's Reciprocal Compensation billings to MFS to reflect any amounts that Ameritech may have incorrectly billed to MFS. Pursuant to Article XVIII of our Interconnection Agreements, Ameritech is willing to discuss appropriate resolution of any disputed amounts, including entering into an appropriate escrow agreement upon mutually-agreeable terms and conditions under which both Parties would pay these disputed amounts into an escrow account pending a determination of the specific amounts that have been paid in error by either Party.

We hope that this clarifies the billing procedures for Reciprocal Compensation. If you have any questions about this matter, please call Eric Larsen, at 312-335-6764 or Sue Springsteen, at 248-424-0758.

Sincerely,


Thomas J. Lamb 
Vice President, Finance

cc:

Director, Regulatory Affairs - Central Region, MFS Intelenet of Michigan, Inc.
Director, Regulatory Affairs - Central Region, MFS Intelenet of Illinois, Inc.